Supreme Court, U.S.
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No. 95-628

In The

Supreme Court of the United States

October Term, 1995

BONNIE C. SABIA, et al.,

Petitioners,

vs.

SEMINOLE COUNTY, FLORIDA, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

KEVIN J. CARDEN
Counsel of Record
HANNAH, MARSEE & VOGHT, P.A.
Attorneys for Respondent, Seminole County
Post Office Box 536487
Orlando, FL 32853-6487
407/849-1122

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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RESTATEMENT OF QUESTIONS PRESENTED

1. In evaluating claims by juvenile pretrial detainees that the actions of the individual defendants constituted deliberate indifference in violation of the detainee's Fourteenth Amendment rights as a pretrial detainee, does the Eighth Amendment deliberate indifference standard apply, or a more protective standard based either on the Due Process Clause or the Fourth Amendment?

2. Given that the Eighth Amendment protects convicted prisoners from only that degree of punishment that can be characterized as cruel and unusual, should the Eighth Amendment deliberate indifference standard apply without modification to jail suicide cases, involving accused juvenile citizens detained pending trial who are entitled to a presumption of innocence and who, unlike convicted prisoners, may not be punished?

3. In regard to the estate of a pretrial detainee in a jail suicide case occurring in a county jail, is a claim of municipal liability limited to the sheriff administering the jail, or is the county properly named as well?

4. In evaluating claims by juvenile pretrial detainees that the actions of the individual defendants and county jail constituted deliberate indifference in violation of the detainees' Fourteenth Amendment rights as a pretrial detainee, can Appellate Courts substitute their findings of fact for disputed facts of record to form a basis for affirming the granting of a Motion for Summary Judgment?

LIST OF PARTIES

Counsel for Respondent certifies to the Court that the following persons are parties to or have an interest in the outcome of this case.

Richard Blount – Respondent

Kevin J. Carden, Esquire
Counsel for Respondent, Seminole County

Margaret Carrow – Petitioner

Donald F. Eslinger, Sheriff – Respondent

Matthew P. Farmer, Esquire
Counsel for Petitioners

Douglas Fauls – Respondent

Rodney G. Gregory, Esquire
Counsel for Petitioners

Matthew McGill – Respondent

Julius F. Parker, Jr., Esquire
Counsel for Respondents, Matthew McGill, Douglas Fauls, Richard Blount, and Donald F. Eslinger

Bonnie Sabia – Petitioner

Seminole County – Respondent

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RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Respondent, Seminole County, respectfully requests this Court deny the Petition for Writ of Certiorari which seeks review of the Eleventh Circuit's Opinion below. That Opinion is unreported, but is reprinted in the Petition for Certiorari at Appendix A.

STATUTORY PROVISIONS

U.S. Constitution, Amendment IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amendment VIII

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Constitution, Amendment XIV

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S.C.A. §1254, Courts of Appeal; Certiorari; Certified Questions.

Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

1. By Writ of Certiorari granted upon the Petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

2. By certification at any time by a Court of Appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification, the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

STATEMENT OF THE CASE

This action was commenced in the U.S. District Court for the Middle District Court for the Middle District of Florida by Petitioners, Bonnie C. Sabia and Margaret Carrow, against the Respondents, Seminole County, Matthew McGil, Douglas Fauls, Donald Eslinger and Richard Blount.[1]

The original Complaint and Demand for Jury Trial was filed on November 7, 1990. The corrected Amended Complaint and Demand for Jury Trial was filed on September 24, 1991. Respondent, Seminole County, filed its Answer and Affirmative Defenses on October 1, 1991. Respondents McGill, Blount, Fauls, and Eslinger filed their Answer and Affirmative Defenses on October 15, 1991.

Respondent, Seminole County, filed a Motion for Summary Judgment with Memorandum in Support on March 31, 1992. Respondents, McGill, Blount, Fauls and Eslinger filed a Motion for Summary Judgment and Memorandum in Support on May 13, 1992. The Motions for Summary Judgment were denied by Order dated July 29, 1992. On August 3, 1992, Respondents McGill, Blount, Fauls and Eslinger filed a Notice of Appeal based on the defense of qualified immunity. Respondent, Seminole County, filed its Notice of Appeal based upon the doctrine of pendant jurisdiction.

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[1] Also named were Jay Lemen, Erma Bass-Paul, Gilbert Kaufman and Seminole County Mental Health Center, Inc. These Defendants have been previously dismissed.

The Eleventh Circuit reversed the Trial Court in an unpublished Opinion dated December 20, 1993, but declined to exercise pendant jurisdiction as to Respondent, Seminole County.

Upon remand, Respondents, McGill, Blount, Fauls and Eslinger filed a Renewed Motion for Summary Judgment on April 6, 1994. Respondent, Seminole County filed a Renewed Motion for Summary Judgment on April 19, 1994. The Motions for Summary Judgment were set for Hearing by Order dated May 16, 1994, and the Hearing was held on June 1, 1994.

By Order dated June 7, 1994, the Trial Court, by Senior Judge George C. Young, granted the Motions for Summary Judgment, and entered Judgment in favor of all Respondents on the merits. Petitioners filed their Notice of Appeal on July 7, 1994.

The Eleventh Circuit issued its per curiam affirmance of the lower court's ruling on July 14, 1995. The Eleventh Circuit per curiam Opinion is unpublished, but included at Appendix B in the Petition for Writ of Certiorari. Petitioners Sabia and Carrow now seek review in the Supreme Court of the United States.

REASONS TO DENY THE WRIT

THIS COURT SHOULD NOT REVIEW AN UNPUBLISHED PER CURIAM AFFIRMANCE OF THE UNITED STATES COURT OF APPEALS BASED ON PROCEDURAL GROUNDS.

The decision sought to be reviewed in this action is a two-paragraph per curiam affirmance of a Summary Judgment entered in favor of all Respondents, including Seminole County. The Opinion of the Eleventh Circuit, in its entirety, is as follows:

Appeal from the United States District Court for the Middle District of Florida

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(July 14, 1995)

Before TJOFLAT, Chief Judge, KRAVITCH, Circuit Judge, and JOHNSON, Senior Circuit Judge.

PER CURIAM:

> In August 1987, Edwin Bateman, a juvenile, committed suicide in the Seminole County Jail while awaiting trial for armed robbery and murder. Bonnie C. Sabia, individually and as administratrix of the estate of Edwin Bateman, and Margaret Carrow, individually and as natural mother of Edwin Bateman, (collectively, "Appellants") brought this action under 42 U.S.C.A. Section 1983 against various defendants. As a result of prior rulings, the only remaining defendants in this case are Matthew McGill, Richard Blount, Douglas Fauls, and Donald Eslinger, in their official capacities, and Seminole County (collectively, "Appellees"). This

> appeal is from the district court's grant of summary judgment for Appellees in June, 1994.
>
> Appellants contend that summary judgment was inappropriate because (1) Appellees failed to sustain their burden of production in moving for summary judgment, (2) there is a genuine issue of fact as to whether the actions of the individual defendants constituted deliberate indifference in violation of Bateman's Fifth Amendment rights as a pretrial detainee, (3) the alleged constitutional violation stemmed from the policies of Seminole County, and (4) the grant of summary judgment violated the law of the case as established by the district court's prior denial of summary judgment for Appellees. After reviewing the record, we conclude that Appellant's contentions are without merit.
>
> AFFIRMED.

The Supreme Court should not review a decision of the Court of Appeals when such decision necessarily involves the lower court's discretion as to a particular set of facts. In *Appalachia Power Company v. American Institute of Certified Public Accountants*, 361 U.S. 121, 80 S.Ct. 16, 4 L.Ed.2d 30 (1959), this Court addressed Petitioner's contention that the District Court, in treating Respondent's Motion to Dismiss as a Motion for Summary Judgment, erred in not following the requirement of Rule 12(b) that "all parties shall be given reasonable opportunity to present all material made pertinent to such Motion [for Summary Judgment] by Rule 56." In response, the Supreme Court held:

> [o]rdinarily an application by a District Court of the Rules of Civil Procedure when affirmed by the Court of Appeals will not be reviewed by

> this Court. This is particularly true where, as here, the question is one that concerns the judgment of the District Judge in relation to a particular set of facts.

Id. at 18. *See also, United States v. Johnston,* 268 U.S. 220, 45 S.Ct. 496, 69 L.Ed. 925 (1925). In the instant case, the District Court's application of Rule 56 and the Eleventh Circuit affirmance should not be disturbed.

THE WRIT SHOULD BE DENIED BECAUSE THE QUESTIONS PRESENTED FOR REVIEW WERE NOT PRESSED OR PASSED ON BELOW.

Only two of the four questions presented for review are actually addressed in the Petition for Writ of Certiorari. These questions are as follows:

1. IN EVALUATING CLAIMS BY JUVENILE PRETRIAL DETAINEES THAT THE ACTIONS OF THE INDIVIDUAL DEFENDANTS CONSTITUTED DELIBERATE INDIFFERENCE IN VIOLATION OF THE DETAINEE'S FOURTEENTH AMENDMENT RIGHTS AS A PRETRIAL DETAINEE, DOES THE EIGHTH AMENDMENT DELIBERATE INDIFFERENCE STANDARD APPLY, OR A MORE PROTECTIVE STANDARD BASED EITHER ON THE DUE PROCESS CLAUSE OR THE FOURTH AMENDMENT?

2. GIVEN THAT THE EIGHTH AMENDMENT PROTECTS CONVICTED PRISONERS FROM ONLY THAT DEGREE OF PUNISHMENT THAT CAN BE CHARACTERIZED AS CRUEL AND UNUSUAL, SHOULD THE EIGHTH AMENDMENT DELIBERATE

INDIFFERENCE STANDARD APPLY WITHOUT MODIFICATION TO JAIL SUICIDE CASES, INVOLVING ACCUSED JUVENILE CITIZENS DETAINED PENDING TRIAL WHO ARE ENTITLED TO A PRESUMPTION OF INNOCENCE AND WHO, UNLIKE CONVICTED PRISONERS, MAY NOT BE PUNISHED?

Petitioners' corrected Amended Complaint and Demand for Jury Trial contains three Counts based, almost exclusively, upon the Fourteenth Amendment and 42 U.S.C. §1983. Indeed, despite the language as contained in Count I, Petitioners abandoned or failed to press any theory based upon the Fourth Amendment to the United States Constitution. More importantly, at no time did Petitioners raise a theory based upon the Eighth Amendment or any standard arising therefrom. Instead, Petitioners have steadfastly pressed a "deliberate indifference" standard.

The initial Brief, filed by Petitioners in the Eleventh Circuit, contains the following: "Argument III: Appellants have demonstrated that their deliberate indifference claim should be presented to a jury." Petitioners then argue that "Plaintiffs have satisfied the burden of demonstrating that the existence of deliberate indifference in this case is that [sic] question for the jury." The Petition for Writ of Certiorari also identifies the central issue as follows:

> . . . [w]hether the "Sheriff's Officer defendants" were deliberately indifferent to Mr. Bateman's serious psychological needs. *Petition for Writ of Certiorari* at 13-14.

Similarly, a review of the Opinion of the Eleventh Circuit, quoted in its entirety herein, demonstrates that the Court did not "pass" on the issue of the appropriate standard in §1983 cases involving jail suicides of pretrial detainees. This Court's traditional rule precludes the grant of Certiorari when the question presented was not "pressed or passed upon below." *Duignan v. United States*, 274 U.S. 195, 200 (1927); *United States v. Williams*, 504 U.S. ___, 112 S.Ct. ___, 118 L.Ed.2d 352, 361 (1992). The instant case should be treated in the same manner.

THE WRIT SHOULD BE DENIED BECAUSE NO CONFLICT EXISTS AS TO THE STANDARD FOR MUNICIPAL LIABILITY.

Each of Petitioners' underlying claims asserts inadequate policies, procedures and customs, and the failure to train. In *Monell v. New York City Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), this Court held as follows:

> [A] municipality can be found liable under §1983 only where the municipality *itself* causes the constitutional violation at issue. *Respondent superior* or vicarious liability will not attach under §1983.

Id. at 694-695.

Petitioners suggest one reason this Court should accept review is because it has never determined what degree of culpability must be shown before the particular constitutional deprivation asserted in this case – a denial of the due process right to medical care while in detention

– is established. *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 243, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983).

However, in citing *Canton v. Harris*, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989), Petitioners fail to state why this Court declined to address the issue of culpability or the question as to whether something less than the Eighth Amendment's "deliberate indifference" test was applicable. The two reasons, as set forth by this Court, are as follows:

> First, Petitioner has conceded that, as the case comes to us, we must assume that respondent's constitutional right to receive medical care was denied by City employees – whatever the nature of that right might be. [S]econd, the proper standard for determining when a municipality will be liable under §1983 for constitutional wrongs does not turn on any underlying culpability test that determines when such wrongs have occurred.

Id. at 1205, n.8.

As the District Court Senior Judge, George C. Young, correctly points out in his Order dated June 7, 1994 (reproduced in Petition for Writ of Certiorari at Appendix B), Seminole County can be liable under §1983 only where it is the "moving force" behind the alleged constitutional violation or only when such violations occur as a result of an official County policy. Citing *Monell, id.*, at 694. The proper standard was applied.

CONCLUSION

The United States Supreme Court should not be called on to review an unpublished per curiam affirmance based on the discretion of a District Judge in relation to a particular set of facts, and where no constitutional provision is implicated as to municipal liability.

Respectfully submitted,

KEVIN J. CARDEN
Counsel of Record
HANNAH, MARSEE & VOGHT, P.A.
Attorneys for Respondent,
Seminole County
Post Office Box 536487
Orlando, FL 32853-6487
407/849-1122